

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

HOPE C. NEAVES,

Respondent.

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Transcript of the Record

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Upon Petition to Review an Order of the United States  
Board of Tax Appeals.

FILED

MAR 27 1935

PAUL D. GIBBEN,  
Clerk



No. 7736

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Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## APPEARANCES:

For Petitioner:

HARRY KAHAN, C. P. A.

For Respondent:

J. H. YEATMAN, Esq.

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Docket No. 50787

HOPE C. NEAVES,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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## DOCKET ENTRIES.

1930

Nov. 11—Petition received and filed. Taxpayer notified. (Fee paid)

Nov. 12—Copy of petition served on General Counsel.

Dec. 2—Answer filed by General Counsel.

Dec. 17—Copy of answer served on taxpayer—Circuit calendar.

1933

Aug. 2—Hearing set for week of Sept. 11, 1933, Long Beach, Calif.

Sept. 12—Hearing had before Mr. Marquette, Division 1, (called Sept. 11, 1933) on merits. Submitted. Briefs due Nov. 12, 1933.

1933

Oct. 2—Transcript of hearing Sept. 12, 1933 filed.

Oct. 16—Brief filed by taxpayer.

1934

May 14—Memorandum opinion rendered—Mr. Marquette, Division 1. Judgment will be entered of no deficiency.

May 16—Decision entered—Division 1.

July 7—Motion for reconsideration and to vacate memorandum opinion and decision filed by General Counsel. 7/26/34 denied.

Oct. 12—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by General Counsel.

Oct. 23—Proof of service filed (2)

Oct. 27—Motion for denial of request for certification of a transcript of record filed by taxpayer.

Nov. 6—Order that petitioner's motion of Oct. 27, 1934 be denied for lack of jurisdiction entered.

Nov. 19—Praecipe filed by General Counsel.

Dec. 3—Affidavit of service of praecipe filed.

Dec. 4—Proposed amendments to statement of evidence lodged by taxpayer. 12/21/34 denied.

Dec. 5—Amended praecipe filed.

Dec. 5—Further proposed amendments to statement of evidence lodged by taxpayer. 12/21/34 denied.

Dec. 5—Motion for extension to 12/19/34 to complete record filed by General Counsel.



1934

- Dec. 5—Order enlarging time to Dec. 19, 1934 for preparation of evidence and delivery of record entered.
- Dec. 14—Proof of service of amended praecipe filed.
- Dec. 14—Statement of evidence lodged.
- Dec. 14—Notice of lodgment of statement of evidence with hearing notice 12/19/34 filed. [1\*]
- Dec. 18—Motion for extension to 1/19/35 to complete record filed by General Counsel.
- Dec. 18—Order enlarging time to Jan. 19, 1935 to prepare evidence and transmit record entered.
- Dec. 19—Hearing had before Miss Matthews, Division 13, (Marquette) on approval of statement of evidence.
- Dec. 19—Transcript of hearing of Dec. 19, 1934 filed.
- Dec. 21—Statement of evidence approved and ordered filed. [2]

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\*Page numbering appearing at the foot of page of original certified Transcript of Record.

## United States Board of Tax Appeals

Docket No. 50787

HOPE C. NEAVES,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

## PETITION.

The above named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (IT:AR:E-1-ML-60D), dated October 15, 1930, and as a basis of her proceedings alleges as follows:

(1) The Petitioner is an individual residing at 1720 Chevy Chase Drive, Beverly Hills, California.

(2) The Notice of Deficiency (a copy of which is attached and marked EXHIBIT "A") was mailed to the taxpayer on October 15, 1930.

(3) The taxes in controversy are income taxes for the calendar year 1928, and for Twelve Hundred Forty-four Dollars Nineteen Cents (\$1,244.19).

(4) The determination of tax set forth in this said Notice of Deficiency is based upon the following errors:

(a) The failure of the Commissioner to find that the sale of eighty (80) shares of capital stock of the United Wire and Supply Company resulted

in a deductible loss of Thirteen Hundred Sixty Dollars (\$1,360.00).

(b) The failure of the Commissioner to find that the sale of one hundred fifty (150) shares of six percent (6%) preferred stock of the United Wire and Supply Company resulted in a capital net loss of Eight Thousand Four Hundred Fifty-five Dollars (\$8,455.00).

(5) The facts upon which the taxpayer relies as the basis of this proceeding are as follows:

(a) The taxpayer purchased eighty (80) shares of United Wire and Supply Company preferred capital stock from Richard S. Moore and Company, Investment Securities, Providence, Rhode Island, on December 26, 1926, for Sixteen Hundred Dollars (\$1,600.00). This stock was exchanged in 1927 for eighty (80) shares of common stock in the same company, in accordance with a reorganization plan. On December 18, 1928, the taxpayer sold this eighty (80) shares of stock to George B. Champlin, her father, for Two Hundred Forty Dollars (\$240.00), incurring a loss of Thirteen Hundred Sixty Dollars (\$1,360.00).

(b) The taxpayer acquired one hundred fifty (150) shares of senior preferred stock of the United Wire and Supply Company on January 29, 1917, the cost of the stock, namely Fifteen Thousand Dollars (\$15,000.00), being paid by the taxpayer's father, George B. Champlin. As a result of the company's [3] reorganization, this one hundred fifty (150) shares was exchanged for one hundred eighty-

seven (187) shares of preferred stock in the new corporation. On December 31, 1928, this one hundred eighty-seven (187) shares of preferred stock was sold to George B. Champlin for Sixty-five Hundred Forty-five Dollars (\$6,545.00), resulting in a capital net loss of Eighty-four Hundred Fifty-five Dollars (\$8,455.00).

(c) The above sales were real and valid transactions, definitely placing legal and equitable ownership out of the hands and out of the control of the seller, and checks in full payment were received by the taxpayer upon consummation of the sale.

(6) Wherefore, the Petitioner prays that this Board may hear the proceeding before a division of the Board in Los Angeles, and determine that the sale of stock of the United Wire and Supply Company by the taxpayer resulted in a deductible ordinary loss of Thirteen Hundred Sixty Dollars (\$1,360.00), and a capital net loss of Eighty-four Hundred Fifty-five Dollars (\$8,455.00), and that there is no deficiency due from the Petitioner for the year 1928.

HARRY KAHAN,  
Counsel for Petitioner.  
625 Pacific National  
Building, Los Angeles.

State of California,  
County of Los Angeles—ss.

Hope C. Neaves, being duly sworn, says that she is the taxpayer named in the foregoing Petition, and is familiar with the statements contained

therein, and that the facts therein stated are true to the best of deponent's knowledge and belief.

HOPE C. NEAVES,  
Petitioner.

Subscribed to before me this 6th day of November, 1930.

[Seal]                      NORMAN C. ECKSTEIN,  
Notary Public in and for State of California,  
County of Los Angeles.

My commission expires Nov. 20, 1932. [4]

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EXHIBIT "A"

NP-2-28

October 15, 1930.

IT:AR:E-1

ML-60D

Mrs. Hope C. Neaves

1720 Chevy Chase Drive,  
Beverly Hills, California.

Madam:

You are advised that the determination of your tax liability for the year 1928 discloses a deficiency of \$1,244.19 as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNET,

Commissioner.

(Signed) By J. C. Wilmer,

Deputy Commissioner.

Enclosures :

Statement

Form 882

Form 870 [5]



STATEMENT.

IT:AR:E-1

ML-60D

In re: Mrs. Hope C. Neaves,  
1720 Chevy Chase Drive,  
Beverly Hills, California.

Tax Liability

Year—1928.

Corrected Tax Liability—\$2,294.66.

Tax Previously Assessed—\$1,050.47.

Deficiency—\$1,244.19.

The report of the internal revenue agent in charge at Los Angeles, California, relative to an examination of your books and records, has been reviewed and approved by this office.

Consideration has been given to information furnished in your protests to the above-mentioned official under dates of April 1, 1930 and May 19, 1930, at a conference held in his office under date of April 8, 1930 and to a protest submitted to this office under date of September 12, 1930.

It is noted that the proposed adjustments to which you take exception are the disallowance of \$1,360,000 claimed as a loss on the sale to your father of common stock of the United Wire and Supply Company, and the disallowance of \$8,455.00 claimed as a capital net loss on the sale to your father of preferred stock of the same company.

It is shown that your father had power of attorney of sufficiently wide scope to allow him to acquire stock for you or dispose of it without consulting you; that he has access to your safe deposit

box in the Rhode Island Trust and Safe Deposit Company; that when stocks are acquired for your account they are deposited therein by him; that when stock is sold for your account he endorses the certificates, attaches his power of attorney thereto and presents it for transfer. The evidence shows that a portion of the stock had been received by you as a gift from your father, that your brother acting as your attorney sold the stock to your father, and that approximately five months later your father sold the stock in question to you.

To establish a loss a sale must be a real valid transaction definitely placing legal and equitable ownership out of the hands and out of the control of the seller. The evidence furnished does not show conclusively that the transactions were one of absolute barter or sale. It is held by this office that the alleged losses were not of such a nature as to render them deductible for purposes of taxation. [6]

In the following decisions of the United States Board of Tax Appeals to which you referred in support of your contentions, conditions are shown that would have weight in establishing the sales as bona fide. The evidence does not show that such conditions existed in your case:

Case of Robert Kurtz published in Board of Tax Appeals Decision, volume 8, page 679.

In this case it is shown that the purchaser expected to realize substantial profit from Italian lire (purchased from his half-brothers who composed the partnership of Kurtz Brothers) in connection with negotiations then pending for the purchase of Italian olive oil.



Case of D. L. Larsh—published in Board of Tax Appeals Decisions, volume 6, page 1086.

It is shown that the sale of stock to the petitioner's brother, although made for the purpose of establishing a loss, was made without any reservations, and that the purchaser being in charge of the business, was in a position to realize any possible benefit which might accrue to the stock at a subsequent date. It appears also that the taxpayer did not repurchase the stock.

Case of B. B. Greever, published in Board of Tax Appeals Decisions, volume 6, page 587.

The evidence shows that in the taxable year certain oil leases had been demonstrated to be worthless for all practical purposes and that while they might have had a speculative value it was no more than nominal. It is shown that the sales were made to the petitioner's brother-in-law and secretary in order that there might be no question that the petitioner had divested himself of any interest in the leases. The leases were not repurchased by the petitioner.

Case of P. P. Griffin, published in Board of Tax Appeals Decisions, volume 7, page 1094.

The petitioner's attorney advised him to sell part of his stock of Bee Tree Lumber Company in order that his books of account would not show thereon an asset of questionable value and also in order that he might claim a loss on his income tax return. He sold the stock to his brother and his secretary for \$6,100.00, and checks in full payment were received during the [7] taxable year. No agreement

or understanding existed concerning the repurchase of the stock. During the following year the petitioner repurchased the stock.

Your return has been adjusted as follows:

Net income reported on return		\$42,089.76
Add:		
1. Interest on tax-free covenant bonds	\$ 605.00	
2. Loss on sale of stock disallowed	1,360.00	1,965.00
	<hr/>	<hr/>
Total		\$44,054.76
Deduct:		
3. Interest income reduced	\$ 250.00	
4. Dividends reduced	300.00	
5. Interest deduction increased	262.50	812.50
	<hr/>	<hr/>
Ordinary net income adjusted		\$43,242.26
Capital net loss reported		8,455.00
6. Capital net loss disallowed		8,455.00
		<hr/>
Capital net loss adjusted		None
Net income adjusted		\$43,242.26
Less:		
Dividends	\$27,631.00	
Personal exemption	3,500.00	31,131.00
	<hr/>	<hr/>
Income subject to normal tax		\$12,111.26
Normal tax at 1½% on \$4,000.00		60.00
Normal tax at 3% on 4,000.00		120.00
Normal tax at 5% on 4,111.26		205.56
Surtax on 43,242.26		2,156.65
		<hr/>
Total tax		\$ 2,542.21
Less:		
Earned income credit	\$ 5.63	
Tax paid at source	241.92	247.55
	<hr/>	<hr/>
Tax assessable		\$ 2,294.66
Tax previously assessed		1,050.47
		<hr/>
Deficiency in tax		\$1 244.19

Explanation of Changes

1. Interest on tax-free covenant bonds has been increased as follows:

\$250.00 Northern Texas Electric Company  
\$180.00 Shaffer Oil and Refining Company  
175.00 New York, New Haven and Hartford  
Railroad Company

---

\$605.00 Total.

2 and 6. Disallowance of losses on sale of United Wire and Supply Company stock explained above.

3. Interest of \$250.00 on bonds of Northern Texas Electric Company has been transferred from item 3 to item 3(a) for inclusion with other interest on tax-free covenant bonds.

4. Dividends from E. M. Dart Manufacturing Company were found to be overstated by \$300.00.

5. The deduction for interest paid has been increased by \$262.50.

You are advised that a copy of this communication has been transmitted to your attorney, Mr. Harry Kahan, 625 Pacific National Building, Los Angeles, California, who has on file in this office a duly recorded power of attorney.

[Endorsed]: Filed Nov. 11, 1930. [9]

---

[Title of Court and Cause.]

ANSWER.

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of

Internal Revenue, for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

1. Admits the allegations contained in paragraph (1) of the petition.

2. Admits the allegations contained in paragraph (2) of the petition.

3. Admits the allegations contained in paragraph (3) of the petition.

4. Denies that the respondent erred in the determination of the said deficiency as alleged in sub-paragraphs (a) and (b) of paragraph (4) of the petition.

5. Denies all of the material allegations contained in sub-paragraphs (a) to (c), inclusive, of paragraph (5) of the petition.

6. Denies generally and specifically each and every allegation of the petition not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the appeal be denied.

(Sgd) C. M. CHAREST,  
General Counsel,  
Bureau of Internal Revenue.

Of Counsel:

F. B. SCHLOSSER,  
Special Attorney,  
Bureau of Internal Revenue.

[Endorsed]: Filed Dec. 2, 1930. [10]

[Title of Court and Cause.]

Harry Kahan, C. P. A., for the petitioner.

J. H. Yeatman, Esq., for the respondent.

MEMORANDUM OPINION.

MARQUETTE: The respondent has determined a deficiency in income tax against the petitioner for the calendar year 1928 in the amount of \$1,-244.19. In her return for that year the petitioner claimed a loss of \$1,360 on the sale of common stock of United Wire & Supply Co., and a capital net loss of \$8,455, on the sale of preferred stock of the same company. These claimed losses were disallowed by the respondent and the only question for decision is whether such disallowance was proper. [11]

It appears that in 1928 petitioner was the owner of 80 shares of common stock of United Wire & Supply Co., which had been acquired December 29, 1926, at a cost of \$1,600, and 150 shares of preferred stock of said company acquired in 1917 by gift from her father, which stock had a cost of \$15,000. The petitioner, a resident of California, kept the stock in a safe deposit box in Providence, R. I., to which her brother, who acted for her in business transactions under a power of attorney, had access. In the latter part of 1928 the petitioner was advised by her brother to sell the 80 shares of common stock and 150 shares of preferred stock of United Wire & Supply Co., to which she assented, but she had no knowledge to whom the stock was to

be sold. On December 18, 1928, petitioner's said brother sold the stock to petitioner's father receiving therefor \$240 for the 80 shares of common stock and \$6,545 for the 150 shares of preferred stock, and said amounts were paid to petitioner by check of her father in the amount of \$6,785 and deposited to petitioner's account in the Phenix National Bank of Providence, R. I.

There was no agreement or understanding between petitioner and any other person that she could or would purchase said stock or any part thereof, and the said sale price of \$6,785 represented the prevailing market price of the stocks at the time of said sale. The said stock so sold or similar stocks were reacquired by petitioner in May, 1929.

In her income tax return for 1928 petitioner claimed a loss of \$1,360 on the sale of the 80 shares of common stock, and a capital net [12] loss of \$8,455 on the sale of the preferred stock, both of which claims the respondent disallowed on the ground that the transaction was not a bona fide sale.

The only limitation upon losses claimed to have been sustained in sales of stock contained in the Revenue Act of 1928, is in section 118, and under the facts of this case such section is not applicable. In a situation such as is disclosed by the findings of fact herein, it is the duty of the Board to scrutinize the transaction and to require clear proof that the transaction was bona fide and not colorable, and that the consideration received was commen-



surate with the market value of the property sold. We find that the petitioner, upon the advice of her brother who acted as her business advisor, authorized the sale by him of the stocks in question without any knowledge as to who would purchase them and that there was no agreement or understanding to repurchase the same. The price received on the sale was the then market value of the stocks, and there is nothing in the record to indicate that the transaction was a subterfuge or that petitioner retained any title or rights in or to the stocks after the sale. The fact that in May of the following year the petitioner reacquired the same or similar stocks, not being within the inhibition of the statute, is only material in so far as it throws light upon the bona fides of the sale. As said by the court in *Commr. v. Hale*, 67 Fed. (2d) 561, 563:

The mere fact that the transfer was made by the appellee for the avowed purpose of reducing his income tax does not render it invalid, when the sum received was equal to what could otherwise be obtained from other parties, as in this case. *Wiggin v. Commissioner of Internal Revenue*, 46 Fed. (2d) 743, 745-6; [13] *Bullen v. State of Wisconsin*, 240 U. S. 625.

To hold such transfers are valid to create deductible losses in computing income taxes may furnish opportunity for fraud upon the government, and courts will require clear proof that the transaction was bona fide and not subterfuge, and that full value was paid; but when,

as in this case, it is conceded that full value was paid and from the separate property of the wife, we think a deductible loss occurred under Sec. 214 (a) (5) of the Revenue Act of 1926.

We are of opinion that the evidence herein warrants the conclusion that the sale was a bona fide sale and that the petitioner is entitled to the deductions claimed.

Judgment will be entered of no deficiency.

Enter:

[Endorsed]: Entered May 14, 1934.] [14]

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United States Board of Tax Appeals  
Washington

Docket No. 50787

HOPE C. NEAVES,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION.

Pursuant to the determination of the Board, as set forth in its memorandum opinion entered May 14, 1934, it is



ORDERED and DECIDED: That there is no deficiency for the calendar year 1928.

Enter:

[Seal]                   (Sgd) JOHN J. MARQUETTE,  
Member.

[Endorsed]: Entered May 16, 1934. [15]

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[Title of Court and Cause.]

MOTION FOR RECONSIDERATION AND TO  
VACATE MEMORANDUM OPINION AND  
DECISION.

Now comes the respondent, by and through his attorney, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, and respectfully moves the Board to reconsider its memorandum opinion and decision of no deficiency entered in the above proceeding on May 16, 1934, and for cause shows:

1. That the second error alleged in the petition is the failure of the Commissioner to find that the sale of 150 shares of 6% preferred stock of United Wire and Supply Company resulted in a capital net loss of \$8,455.00. In respondent's answer it was denied that respondent erred in the determination of the deficiency as alleged in the petition, thus one of the issues joined by the pleadings is whether or not the petitioner sustained a capital net loss of \$8,455.00 on the sale of 150 shares of the 6% preferred stock of the United Wire and Supply Company.

2. The petitioner testified, on both direct and cross examination, that the shares of 6% preferred stock of United Wire and Supply Company on which the loss of \$8,455.00 is claimed and allowed by the Board, was acquired by gift from her father in the year 1917. (Tr. pages 4 and 17). [16]

3. Section 113(a)(4) of the Revenue Act of 1928 provides:

“The basis for determining the gain or loss from the sale or other disposition of the property acquired after February 28, 1913 shall be the cost of such property; except that

\* \* \* \* \*

If the property was acquired by gift or transfer in trust on or before December 31, 1920 the basis shall be the fair market value of such property at the time of such acquisition.

\* \* \* .”

4. No evidence whatever was adduced at the hearing of this proceeding to show what the fair market value of the 150 shares of preferred stock of United Wire and Supply Company was in 1917 when it was acquired by petitioner from her father by gift. There was, therefore, nothing before the Board from which it could have properly determined the amount of the loss, if any, that was sustained on the sale of the stock in 1928. The burden was not only on the petitioner to prove that she sustained a loss on the sale but she had the duty of showing the basis for it. This she has utterly

failed to do. A showing of what the stock cost the donor is not sufficient. The donee takes the donor's basis for gain or loss only in the case of property acquired by gift after December 31, 1920. Where as here the gift was made prior to such date the statute plainly says that the basis for gain or loss is the fair market value of the property at the date the gift was made. Hence, the fair market value of the stock in question was an essential element of petitioner's case, and having omitted to show what that value was on the basic date, the Board erred in allowing the loss claimed.

WHEREFORE, it is prayed that the memorandum opinion of May 14, 1934 and decision entered pursuant thereto be vacated and set aside, and that [17] a revised opinion be promulgated in which the loss claimed on the sale of the 150 shares of stock in question be denied, and that provision be made for the entering of a decision under Rule 50.

(Sgd) ROBERT H. JACKSON,

Assistant General Counsel for the  
Bureau of Internal Revenue.

Of Counsel:

JAMES H. YEATMAN,  
Special Attorney,  
Bureau of Internal Revenue.

[Endorsed]: Filed Jul. 7, 1934.

[Endorsed]: Denied Jul. 26, 1934. [18]

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

[Title of Cause.]

PETITION FOR REVIEW AND ASSIGN-  
MENTS OF ERROR.

To the Honorable Judges of the United States Cir-  
cuit Court of Appeals for the Ninth Circuit:

Now comes Guy T. Helvering, Commissioner of  
Internal Revenue, by his attorneys, Frank J. Wide-  
man, Assistant Attorney General, Robert H. Jack-  
son, Assistant General Counsel for the Bureau of  
Internal Revenue, and James H. Yeatman, Special  
Attorney for the Bureau of Internal Revenue, and  
respectfully shows:

I.

JURISDICTION.

The petitioner on review (hereinafter referred to  
as the Commissioner) is the duly appointed, quali-  
fied and acting Commissioner of Internal Revenue  
of the United States, holding his office by virtue of  
the laws of the United States.

The respondent on review is an individual and an  
inhabitant of the State of California, residing at  
Beverly Hills, California. The respondent on re-  
view filed her Federal income tax return for the  
calendar year 1928 with the Collector of Internal  
Revenue for the Sixth District of California, whose  
office is located at Los Angeles, California, and  
within the judicial circuit of the United States Cir-  
cuit Court of Appeals for the Ninth Circuit. [19]

The Commissioner files this petition pursuant to  
the provisions of Sections 1001, 1002, and 1003 of

the Revenue Act of 1926, as amended by Section 603 of the Revenue Act of 1928, as amended by Section 1101 of the Revenue Act of 1932, as amended by Section 519 of the Revenue Act of 1934.

## II.

### PRIOR PROCEEDINGS.

The Commissioner determined a deficiency of \$1,244.19 in the Federal income tax liability of the respondent on review and pursuant to the provisions of Section 272 of the Revenue Act of 1928 sent notice of such deficiency to the respondent by registered mail. Thereafter the respondent on review duly filed a petition with the United States Board of Tax Appeals praying for a redetermination of the deficiency. The proceeding came on for hearing before the Board in due course. On May 14, 1934 the Board promulgated its memorandum opinion, and on May 16, 1934, pursuant to said memorandum opinion, the Board entered its decision (final order of redetermination) wherein it was ordered and decided that there is no deficiency in the income tax liability of the respondent for the calendar year 1928. On July 7, 1934 the Commissioner filed with the Board a motion to reconsider and vacate its memorandum opinion and decision. The Board denied said motion on July 26, 1934.

## III.

### NATURE OF CONTROVERSY.

The nature of the controversy is as follows:

On her return for the calendar year 1928 the respondent claimed an ordinary loss of \$1,560.00 on



the sale of 80 shares of the common stock of the United Wire and Supply Company and a capital net loss of \$8,455.00 on the sale of 150 shares of preferred stock of the same Company. The [20] Commissioner disallowed the losses claimed on the ground that the sales were not bona fide. The 80 shares of common stock were acquired by the respondent by purchase on December 29, 1926, and the 150 shares of preferred stock were acquired by her by gift from her father in the year 1917. The stocks in question were kept in respondent's safe deposit box in Providence, Rhode Island. Respondent's brother had access to her deposit box and also acted for her in business matters under a power of attorney. In the latter part of 1928 the respondent was advised by her brother to sell the stocks to which she assented. On December 18, 1928 respondent's brother sold the stocks to their father and received therefor \$240.00 for the 800 shares of common and \$6,545.00 for the 150 shares of preferred, which sums were deposited to respondent's account in the Phoenix National Bank of Providence, Rhode Island. Respondent repurchased the stocks from her father in May, 1929. No evidence was adduced at the hearing of the cause by the Board of Tax Appeals to show what the 80 shares of common stock cost the respondent or to show what the fair market value of the 150 shares was at the time same were received by respondent by gift from her father. Notwithstanding this the Board of Tax Appeals determined that the losses were allowable in the amounts claimed.

IV.

ASSIGNMENTS OF ERROR.

The Commissioner avers that in the record and proceeding before the Board of Tax Appeals and in the opinion and final decision rendered and entered by the Board of Tax Appeals manifest error occurred and intervened to the prejudice of the Commissioner who now assigns the following errors, and each of them, which the avers, occurred in the said record, proceeding, opinion, and final decision so rendered and entered by [21] the Board of Tax Appeals:

1. The Board erred in finding as a fact that the 80 shares of common stock of the United Wire and Supply Company were acquired by the taxpayer at a cost of \$1,600.00.

2. The Board erred in finding as a fact that the 150 shares of preferred stock of United Wire and Supply Company had a cost of \$15,000.00.

3. The Board erred in finding as a fact that the 80 shares of common stock of the United Wire and Supply Company cost the sum of \$1,600.00 for the reason that such finding is not supported by any substantial evidence.

4. The Board erred in finding as a fact that the 150 shares of preferred stock of United States Wire and Supply Company cost the sum of \$15,000.00 for the reason that such finding is not supported by any substantial evidence.

5. The Board erred in determining and deciding that the cost of the 150 shares of stock of the United

Wire and Supply Company is the proper basis for determining gain or loss from the sale or other disposition thereof.

6. The Board erred in determining and deciding that the taxpayer sustained a deductible loss of \$1,360.00 on the sale of 80 shares of common stock of United Wire and Supply Company, and a deductible loss of \$8,455.00 on the sale of 150 shares of preferred stock of the United Wire and Supply Company.

7. The Board erred in not approving and affirming the Commissioner's determination on the ground that the taxpayer failed to meet the burden cast upon her by statute of proving the basis for gain or loss, if any, [22] on the sales or disposition of the said common and preferred stock of the United Wire and Supply Company.

8. The Board erred in determining the taxpayer's tax liability and deciding that there was no deficiency for the year 1928.

9. The Board erred in failing to approve the deficiency in tax for the year 1928 as determined by the Commissioner.

10. The Board erred in not rendering judgment for the Commissioner for the full amounts disclosed by the deficiency letter for the reason that any other judgment was not supported by any competent or substantial evidence nor according to law.

WHEREFORE, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Ap-



peals for the Ninth Circuit, that a transcript of the record be prepared in accordance with law and with the rules of said Court and transmitted to the clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Sgd) FRANK J. WIDEMAN,

Assistant Attorney General.

(Sgd) ROBERT H. JACKSON,

Assistant General Counsel for the  
Bureau of Internal Revenue.

Of Counsel:

JAMES H. YEATMAN,

Special Attorney,

Bureau of Internal Revenue. [23]

JAMES H. YEATMAN, being duly sworn, says that he is a special attorney in the office of the Assistant General Counsel for the Bureau of Internal Revenue and one of the attorneys for the petitioner on review, and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

(Sgd) JAMES H. YEATMAN.

Sworn and subscribed to before me this 12th day of October, 1934.

(Sgd) H. B. LINTON,  
Notary Public

My commission expires April 16, 1937.

[Endorsed]: Filed Oct. 12, 1934. [24]

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[Title of Court and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW.

To:

Harry Kahan, Esq.,  
Pacific National Building,  
Los Angeles, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 12th day of October, 1934, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 12th day of October, 1934.

(Signed) ROBERT H. JACKSON  
Assistant Attorney General for the  
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review

and assignments of errors mentioned therein, is hereby acknowledged this 16th day of October, 1934.

HARRY KAHAN

Attorney in fact for Respondent  
on Review.

[Endorsed]: Filed Oct. 23, 1934. [25]

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[Title of Court and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW.

To:

Mrs. Hope C. Neaves,  
1720 Chevy Chase Drive,  
Beverly Hills, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 12th day of October, 1934, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 12th day of October, 1934.

(Signed) ROBERT H. JACKSON

Assistant General Counsel for the  
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this.....day of October, 1934.

HOPE C. NEAVES

Respondent on Review.

[Endorsed]: Filed Oct. 23, 1934. [26]

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[Title of Court and Cause.]

STATEMENT OF EVIDENCE.

The following is a statement of evidence in narrative form in the above-entitled cause. This cause came on for hearing before the Hon. John J. Marquette, Member of the United States Board of Tax Appeals, on September 12, 1933. Harry Kahan appeared for the petitioner therein, and E. Barrett Prettyman, former General Counsel for the Bureau of Internal Revenue, appeared for the respondent therein.

MRS. HOPE C. NEAVES,

having been duly sworn as a witness, testified as follows:

The 150 shares of 6% preferred stock of the United Wire and Supply Company which I stated on my tax return was acquired in 1917 was given me by my father, for which he paid a certain sum

(Testimony of Mrs. Hope C. Neaves.)

of money. It was about \$15,000.00. I held the stock until it was sold. In regard to the 80 shares of 7% preferred stock which were shown in Schedule C of my return, they were acquired on December 29, 1926 and were held by me until they were sold. The date of sale was December 13, 1928. At this point there was introduced and received in evidence a cancelled check dated December 18, 1928 on the Phoenix [27] National Bank, Providence, Rhode Island, payable to the order of Hope C. Neaves for \$6,785.00. According to her income tax return Mrs. Neaves received \$240.00 for the 80 shares of 7% stock and \$6,545.00 for the 150 shares of 6% preferred stock, making a total of \$6,785.00 as represented by the check dated December 18, 1928. This check was deposited in the bank to my account by my brother who was acting as attorney for me under a power of attorney. The check represents the sale of the stock. At the time the stock was sold I was living in Beverly Hills. The stock at the time it was sold was in Providence. It was in my custody in a safe deposit box. My brother had access to my safe deposit box. As previously stated, my brother was acting as my attorney under a power of attorney. My brother's name is George S. Champlin. My father's name is George B. Champlin. The stock was sold to my father by my brother. My brother advised me to sell it. At about what date I cannot say offhand. It was the latter part of 1928. He did not explain the reason for the advis-



(Testimony of Mrs. Hope C. Neaves.)

ability of the sale. He just thought it would be better business for me to sell it, and I told him to sell it. He advised me immediately after the sale. I did not know at the time to whom the stock was being sold. I learned this afterwards. I did not have any understanding that I was going to buy the stock back at a later date. My father was 78 years old in 1928. I believe my father had other stock in the company. I understood at the time the sale was made that the stock had been sold. My brother handled a great many other transactions for me under power of attorney. He usually consulted me before making an important transaction on my account. I was not in Providence during any of the years immediately [28] before or after 1928. I have been out here nine years. I still have some securities back there and some here, but mostly there. My brother is still acting under his power of attorney and handling my affairs. There were two blocks of stock which I claim to have sold. The first block was 150 shares. This was the stock that I acquired by gift from my father in 1917. The stock which I sold in 1928 was reacquired by me in 1929 but I cannot give the exact date. I think it was late in 1929. These transactions were all handled by my brother in Providence, Rhode Island. The sale of the stock took place on December 18, 1928. I first learned that the sale had taken place shortly after that. It was in 1928 that I learned this. My brother advised me of the sale by letter. He told me

(Testimony of Mrs. Hope C. Neaves.)

he was going to sell the stock but I did not know at the time to whom he was going to sell it. My father was connected with the corporation by which the stock was issued. I cannot give the exact date when the stock was reacquired by me in 1929. It was late in the year I am sure, but I am not absolutely certain. The transactions were all carried on by correspondence between myself and my brother. I do not have that correspondence. I haven't anything but a personal letter.

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The foregoing evidence is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, as attorney for the Commissioner of Internal Revenue.

(Signed) ROBERT H. JACKSON  
Assistant General Counsel for the  
Bureau of Internal Revenue.

[Endorsed]: Lodged Dec. 14, 1934.

Approved and ordered filed this 21 day of Dec. 1934.

(s) ANNABEL MATTHEWS  
Member.

[Endorsed]: Filed Dec. 21, 1934. [29]

[Title of Court and Cause.]

AMENDED PRAECIPE FOR RECORD

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue.

1. Docket entries of the proceeding before the Board.
2. Pleadings before the Board.
  - (a) Petition, including annexed copy of deficiency letter.
  - (b) Answer.
3. Findings of Fact.  
Opinion and decision of the Board.
4. Respondent's motion for reconsideration and to vacate memorandum opinion and decision entered by Board.
5. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.
6. Statement of evidence as settled or agreed upon.
7. Motion for enlargement of time to transmit and complete the record. [Not included in record.]
8. This amended praecipe, together with proof



of service of notice of filing amended praecipe and of service of copy of amended praecipe.

(Signed) ROBERT H. JACKSON

Assistant General Counsel for the Bureau of Internal Revenue, Counsel for Petitioner on Review.

[Endorsed]: Filed Dec. 5, 1934. [30]

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[Title of Court and Cause.]

NOTICE OF FILING AMENDED PRAECIPE FOR RECORD.

You are hereby notified that the Commissioner of Internal Revenue on the 5th day of December, 1934, filed with the Clerk of the United States Board of Tax Appeals at Washington, D. C., an amended praecipe for record. A copy of this amended praecipe, as filed, is hereto attached and served upon you.

Dated this 5th day of December, 1934.

(Signed) ROBERT H. JACKSON

Assistant General Counsel for the Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the amended praecipe for record, is hereby acknowledged this 8th day of December, 1934.

(Sgd) ALLEN SPIVOCK

Respondent on Review.

[Endorsed]: Filed Dec. 14, 1934. [31]

[Title of Court and Cause.]

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 31, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 4th day of Jan., 1935.

[Seal]

B. D. GAMBLE,

Clerk,

United States Board of Tax Appeals.

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[Endorsed]: No. 7736. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Hope C. Neaves, Respondent. Transcript of Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed January 9, 1935.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.